TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	2
Argument and Authorities	4
Conclusion	15
Addendum	1-a, 1-b

TABLE OF CITATIONS

Bauman v. Bradstreet Company, 238 App. Div. 617, 265 N.Y.S. 169 (1933)	11
Baylis v. Travelers Insurance Company, 113 U. S. 320 (1885)	14
Brady v. Southern Railway Company, 320 U. S. 476 (1943)	14
Carva Food Corporation v. Dawley, 202 Va. 543, 118 S.E.2d 664 (1961)	5
Commissioner of Internal Revenue v. Stimson Mill Company, 137 F.2d 286 (9th Cir. 1943)	13
Cover v. Critcher, 143 Va. 357, 130 S.E. 238 (1925)	6
J. H. Fralin v. American Cyanamid Company, 239 F. Supp. 178 (W.D. Va. 1965)	8
Glanzer v. Shepard, 233 N.Y. 236, 135 N.E. 275 (1922)	9
Globe Home Improvement Company v. Perth Amboy Chamber of Commerce Credit Rating Bureau, 116 N.J.L. 168, 182 A. 641 (1936)	8

TABLE OF CITATIONS—(Cont'd)

	Page
Helvering v. Gowran, 302 U.S. 238 (1937)	13
Jacob v. New York, 315 U.S. 752 (1943)	14
Kithcart v. Metropolitan Life Insurance Company, 150 F.2d 997 (8th Cir. 1945)	14
Lackey v. Brooks, 204 Va. 428, 132 S.E.2d 461 (1963)	8
Laughlin v. Eicher, 145 F.2d 700 (D.C. App. 1945)	13
Lum Wan v. Esperdy, 321 F.2d 123 (2d Cir. 1963)	14
National Motels, Inc. v. Howard Johnson, Inc. of Washington, 373 F.2d 375 (4th Cir. 1967)	8
Pogue v. Retail Credit Company, 453 F.2d 336 (4th Cir. 1972)	5, 12
Richmond Re-Development and Housing Authority v. Laburnum Construction Corporation, 195 Va. 827, 80 S.E.2d 574 (1954)	6
Rusch Factors, Inc. v. Levin, 284 F. Supp. 85 (D.Ct. R.I. 1968)	10
Stevens v. Abbott, Proctor and Paine, 288 F. Supp. 836 (E.D. Va. 1968)	6
Texas Tunnelling Company v. City of Chattanooga, 329 F.2d 402 (6th Cir. 1964)	9
Travelers Insurance Company v. Turner, 211 Va. 552, 178 S.E.2d 503 (1971)	6
Ultarmares Corporation v. Touche, 255 N.Y. 170, 174 N.E. 441, 446 (1931)	8, 9, 10
Xiques v. Bradstreet Company, 70 Hun. 334, N.Y.S. 48 (1893) (Aff'd without opinion, 141 N.Y. 605, 36 N.E. 740 (1894)	7

STATUTES

VA. CODE ANN. § 8-24 (1959 Repl. Vol.)	2, 4, 1-a

IN THE

Supreme Court of the United States

No. 72-672

OCTOBER TERM, 1972

MARTI POGUE,

Petitioner,

vs.

RETAIL CREDIT COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is not reported, but it is found at Pages 2 and 3 of the Appendix to the Petition for a Writ of Certiorari. The opinion of the Court of Ap-

peals for the Fourth Circuit (Appendix 4-9 of Appendix to Petition for a Writ of Certiorari) is reported at 453 F.2d 336 (1972).

JURISDICTION

No jurisdictional requisites are stated in the Petition. However, it is conceded by Respondent that the basis for jurisdiction is 28 U.S.C. § 1254(1) (1966).

QUESTIONS PRESENTED

1. Whether the one-year Statute of Limitations in Virginia bars an action for constructive fraud.

2. Whether a credit reporting agency is liable to third persons for credit reports negligently or grossly negligently prepared where there is no privity of contract between the agency and the third party.

3. Whether the Court of Appeals erred in holding that there was no evidence on which a jury could find reliance of the Plaintiff on the credit report.

STATUTES INVOLVED

§ 8-24 of the CODE OF VIRGINIA.

STATEMENT

This litigation concerns an action by an individual, Marti Pogue, against a credit reporting agency, Retail Credit Company.

In 1967, Ms. Pogue saw an advertisement placed in a Miami newspaper by Walker & Townsend, Inc., of New

York, a firm which made loans up to 90% of the value of the borrower's stock held by it as collateral (Tr. 58, 59). Wishing to hypothecate or pyramid her stock holdings (Tr. 103), Ms. Pogue travelled to New York City on July 20, 1967, signed authorizations for her stockbroker in Miami to transfer some of her stock to Walker & Townsend, and signed notes in the amount of $33,000.00 (Tr. 29, 60, 65, 66). The next day she requested one George Hammerly of Leesburg, Virginia, to order a Dun & Bradstreet report on Walker & Townsend. Mr. Hammerly did not order the Dun & Bradstreet report, but, instead ordered a Retail Credit report (Tr. 32). According to Ms. Pogue, Hammerly assured her that the Retail Credit Company report would be every bit as good as the one from Dun & Bradstreet (Tr. 34).

Ms. Pogue received the Retail Credit report in August, 1967, and claiming to rely upon that report (See Petitioner's Appendix 15), she did not revoke her previous transaction with Walker & Townsend, but proceeded to make another loan with Walker & Townsend (Tr. 40). Then, becoming suspicious of Walker & Townsend's failure to service her account properly (Tr. 39, 40), she ordered a Dun & Bradstreet report through her Miami bank (Tr. 41). That report (See Petitioner's Appendix 16-20) raised some serious questions as to the integrity of Walker & Townsend, and Ms. Pogue travelled to New York City to visit their offices, only to find them vacant (Tr. 48-51).

On such evidence, the Trial Court found that no cause of action existed on Ms. Pogue's theories of constructive fraud, negligence, or on breach of contract, and directed a verdict in favor of Retail Credit Company.

The jury returned a verdict in favor of the defendant George Hammerly.

The Court of Appeals for the Fourth Circuit summarily affirmed both the directed verdict and the jury verdict. As

to the claim against Retail Credit, the Court of Appeals stated that while Ms. Pogue may have met her burden of proof on showing negligence on the part of Retail Credit Company in preparing its report, she did not meet the burden of proof of showing her reliance on such report. The Court further stated that an objective evaluation of the Retail Credit report indicated that it contained no information on which an experienced business woman such as Ms. Pogue might reasonably rely.

Ms. Pogue has sought a Petition for a Writ of Certiorari to the decision of the Court of Appeals only as to the Retail Credit Company.

ARGUMENT AND AUTHORITIES

I. The One-Year Statute of Limitations in Virginia Bars Pogue's Suit Against Retail Credit.

Retail Credit Company would urge this Court to consider the application of the one-year Statute of Limitations in Virginia. Va. Code Ann. § 8-24 (1957 Repl. Vol.) (See Addendum 1). That statute provides as follows:

> ". . . Every personal action, for which no limitation is otherwise prescribed, shall be brought within five years next after the right to bring the same shall have accrued, if it be for a matter of such nature that in case a party died it can be brought by or against his representatives; *and, if it be for a matter not of such nature, shall be brought within one-year next after the right to bring the same shall have accrued . . .*" Va. Code Ann. § 8-24 1957 Repl. Vol.)

While the Trial Court heard argument on the applicability of the one-year Statute of Limitations, the Court reserved

his decision in the first instance, and rendered the point moot when he directed a verdict for Retail Credit (Tr. 209). The Court of Appeals also reserved decision as to whether or not the one-year statute applied. *Pogue* v. *Retail Credit Company*, 453 F.2d 336, 338 (4th Cir. 1972). Rather than abandon this point, Respondent would like to restate it briefly here.

In *Carva Food Corporation* v. *Dawley*, 202 Va. 543, 118 S.E.2d 664 (1961) the Supreme Court of Virginia applied the one-year Statute of Limitations in a case involving negligence or constructive fraud. There, the defendant was an insurance agent who failed to write an endorsement to the plaintiff's insurance policy. A loss occurred which would have been covered, but for the failure of the endorsement. The suit was based on negligence or constructive fraud, in that the insurance agent allegedly falsely or inadvertently represented that the policy covered the loss in question when in fact it did not. The Supreme Court of Virginia held that the loss was only indirectly a consequence of the representation, and thus the action did not survive, resulting in the application of the one-year Statute of Limitations. The Court stated as follows:

> "Carva's property was not damaged when the insurance policy was issued without full sprinkler leakage coverage. Its property was damaged when water was discharged from the sprinkler system as a result of a windstorm. Dawley was not instrumental in causing the windstorm, nor was he responsible for its results. The damages would not have occurred except for the happening of a severe windstorm, an intervening event which might have never happened. They were the indirect and consequential results of the wrong charged to Dawley. *Carva Food Corp.* v. *Dawley*, 202 Va. 543, 547, 118 S.E.2d 664, 667 (1961).

The circumstances of this case are quite similar to those in *Carva*. Here, the injury suffered by Ms. Pogue resulted from

the absconding by Walker & Townsend of her securities. Her damages were a direct result of their failure to honor their agreement with her and further from their illegal behavior. If it be assumed for the purposes of argument that the Retail Credit report was negligently prepared, it still remains a fact that the loss was occasioned only indirectly by the report. The securities were transferred prior to the request for the report. The direct cause of the loss was the malfeasance of Walker & Townsend. Accordingly, since Ms. Pogue's loss at best would be only an indirect consequence of a negligently prepared credit report, then her suit should have been brought within one year from the time the cause of action arose. As stated in *Richmond Re-Development and Housing Authority* v. *Laburnum Construction Corporation*, 195 Va. 827, 80 S.E.2d 574 (1954):

> "This section has consistently been construed to provide for survival where the damage to property for which recovery is sought is the direct result of the wrong. Where such damage is an indirect result of the wrong, the action does not survive." *Richmond Re-Development and Housing Authority* v. *Laburnum Construction Corporation*, 195 Va. 827, 834, 80 S.E.2d 574, 579 (1954).

Also see *Travelers Insurance Company* v. *Turner*, 211 Va. 552, 178 S.E.2d 503 (1971); *Cover* v. *Critcher*, 143 Va. 357, 130 S.E. 238 (1925).

In Virginia, a cause of action for fraud is deemed to accrue, at the time such fraud is discovered, or by the exercise of due diligence ought to have been discovered. *Stevens* v. *Abbott, Proctor and Paine*, 288 F. Supp. 836 (E.D. Va. 1968). Here, it is clear that the alleged fraud—that the Retail Credit report was not as complete as the Dun & Bradstreet report—was discovered by Appellant in October of 1967, when she received the Dun & Bradstreet report (T. 91). At that time, her cause of action accrued. Thus, any cause of action for negligence or constructive

fraud possessed by the Plaintiff in October of 1967 was barred one year from that date, and most certainly barred on July 16, 1969, the date of the filing of this suit.

II. A Credit Reporting Agency Is Not Liable to Third Persons for Credit Reports Which Are Negligently or Grossly Negligently Prepared Where There Is No Privity of Contract Between the Agency and the Third Party.

Responding to the first point raised in Petitioner's Brief, it is plain that her case rests on two factors:

1. The degree of negligence, if any, which can be attributed to Retail Credit Corporation in the preparation of its report; and

2. Whether or not Ms. Pogue belongs to a class which would foreseeably use that report.

A. Retail Credit was not negligent in the preparation of its report.

The duty of a mercantile agency in regard to investigations and report made by it can be described as follows:

> "All that can be demanded of such a corporation is that it shall make due and diligent inquiries and furnish the results to its customer." *Xiques* v. *Bradstreet Company*, 70 Hun. 334, N.Y.S. 48 (1893) (aff'd without opinion, 141 N.Y. 605, 36 N.E. 740 (1894)).

In addition, when the contract between the mercantile agency and its customer contains a stipulation to the effect that the mercantile agency shall not be held liable for any negligence in the making of the reports, the general rule is that no liability arises as to the customer unless the mer-

cantile agency is guilty of gross negligence, such as would amount to fraud. *Globe Home Improvement Company* v. *Perth Amboy Chamber of Commerce Credit Rating Bureau,* 116 N.J.L. 168, 182 A. 641 (1936). Although contracts against liability are not generally favored, and are invalid when the public interest is involved, they are not contrary to public policy and they are allowed in Virginia. *Lackey* v. *Brooks,* 204 Va. 428, 132 S.E.2d 461 (1963); *J. H. Fralin* v. *American Cyanamid Company,* 239 F. Supp. 178 W.D. Va. 1965; *National Motels, Inc.* v. *Howard Johnson, Inc. of Washington,* 373 F.2d 375 (4th Cir. 1967).

Accordingly, Ms. Pogue could recover against Retail Credit only if she were the customer of Retail Credit, *and* only if Retail Credit were grossly negligent in the investigation and preparation of its report. However, that was not the case here for two reasons. First, there was a stipulation between the person who ordered the report, Mr. Hammerly, and Retal Credit, limiting the liability of Retail Credit. (See Addendum 2.) Secondly, there was a further stipulation that the report would remain confidential and not be disclosed to third parties. Thus both stipulations were to Ms. Pogue's detriment. Not only was Ms. Pogue not a customer of Retail Credit, but she should not have been privy to the report. Additionally, no evidence was produced that Retail Credit was grossly negligent in the preparation of the report. Accordingly, the directed verdict in favor of Retail Credit was quite proper.

One class of cases has placed liability on the part of a furnisher of information to third parties who rely upon such information to their detriment. The leading case in this area is *Ultramares Corporation* v. *Touche,* 255 N.Y. 170, 174 N.E. 441 (1931). There, one Touche, a certified public accountant, had failed to make inquiry into questionable sales records in arriving at a false and inflated net worth figure for Stern and Company, Inc. The plaintiff, Ultramares, re-

lying on the balance sheet prepared for Stern, made several loans to Stern shortly before Stern went bankrupt. Ultramares sued Touche for negligent misrepresentation and fraud. The Court of Appeals, speaking through Chief Justice Cardozo, held that since the service rendered was primarily for the benefit of the Stern Company, and only incidentally or collaterally for the use of those to whom Stern and its associates might exhibit it, foresight of these possibilities could only charge Touche with liability for fraud. However, it certainly would not charge Touche with liability for negligence. *Ultramares Corporation* v. *Touche*, 255 N.Y. 170, 174 N.E. 441, at page 446 (1931). The reason for the distinction is plain. For Touche to have been liable to Ultramares on the grounds of negligence, Ultramares would have to had been in more than a vague class of possible users of the erroneous balance sheet. In other words, Ultramares would have to have been in a foreseeable class of users, and one which was limited in scope. This is the majority position. See *Texas Tunnelling Company* v. *City of Chattanooga*, 329 F.2d 402 (6th Cir. 1964).

In his opinion, Chief Justice Cardozo distinguished *Ultramares* from *Glanzer* v. *Shepard*, 233 N.Y. 236, 135 N.E. 275 (1922). There, the seller of an amount of beans requested a public weigher to weigh the beans and to supply the buyer with a certified copy of the weight. The weigher knew that the amount paid by the buyer depended upon the total weight of the beans. The weight certified was in error and the buyer paid more than he was required. He then sued the weigher for the loss. Judgment was entered for the buyer by the Trial Court, and the Court of Appeals affirmed.

In contrasting the two cases, Chief Justice Cardozo pointed out that "the service rendered in *Glanzer* v. *Shepard* was primarily for the information of a third person [who was] in effect, if not named, a party to the contract, and only incidentally for that of the formal promisee." *Ultra-*

mares Corporation v. *Touche*, 255 N.Y. 170, 174 N.E. 441, at page 446 (1931). However, in *Ultramares*, the service was primarily for the benefit of the Stern Company, and only incidentally for the use of those to whom Stern and his associates might exhibit it. The same situation is present here. Retail Credit's report was primarily for the benefit of George Hammerly. It was at best unintentionally and a worst accidentally for the benefit of Ms. Pogue. Only if Retail Credit were guilty of actual fraud—as opposed to constructive fraud which stems from negligence—would it be potentially liable to Ms. Pogue. Such was not the case.

Moreover, contrary to what Petitioner's brief implies, *Rusch Factors, Inc.* v. *Levin*, 284 F. Supp. 85 (D. Ct. R.I. 1968) does not change the standard set out in *Ultramares*. The defendant accountant in the *Rusch* case knew that his balance sheet was to be used by the plaintiff. Certainly, in that case, since plaintiff was one of a limited class, whom it was foreseen would rely on the information provided, defendant's negligence in giving that information made him liable.

Petitioner quotes the Restatement of Torts for the proposition that a negligent party must know only the existence of a class which will rely upon his information, but not necessarily any of the persons who rely. Certainly, no one would quarrel with that statement. However, the person harmed must still belong to a *class* which can be foreseen to possibly rely on the information provided. The individual harmed cannot be so remote as to make his reliance mere speculation. Here, Retail Credit, particularly in light of its express stipulation, could hardly be expected to know that anyone other than Hammerly would be relying on its report. Thus, that class—people other than the customers of Retail Credit—are unforeseen and too remote so it does become mere speculation that they would rely on the report.

Without question, Retail Credit owed a duty to its customers. George Hammerly was one of its customers. How-

ever, Ms. Pogue was not one of its customers and did not belong to that class to whom the viewing of the credit report would be foreseeable. Accordingly, she was required to show negligence, amounting to fraud, on the part of Retail Credit. This she failed to do and the Court of Appeals was correct in affirming the District Court's direction of a verdict for Retail Credit.

B. Retail Credit was not guilty of gross negligence.

Bearing in mind Retail Credit's stipulation against liability, even if Retail Credit failed to find some information which Dun & Bradstreet found, such failure must have been gross, if it was negligence at all, in order to charge Retail Credit. Certainly, there was no gross negligence here.

In *Bauman* v. *Bradstreet Company*, 238 App. Div. 617, 265 N.Y. Supp. 169 (1933) the question was whether Defendant was grossly negligent for failure to examine a judgment known to have been outstanding against the person being investigated. There, the Court found that there was no duty to investigate the records for judgment and therefore did not even find a case of simple negligence. Even without such a finding, it is probable that there would have been no negligence imputed to the defendant, since the report included information which indicated to the reader upon which factors the rating given was based. Certainly, if there was no gross negligence in that case, Retail Credit could hardly be guilty of any here. Moreover, the indicators upon which the Retail Credit information was based—namely, sources at the business address itself—were shown.

More importantly, a study of the Retail Credit Report itself indicates that there was neither negligent misrepresentation nor any fraud involved in making the report. Even to the uninitiated in business affairs, the report has to be taken as "worthless," which is Ms. Pogue's own characterization of

it (Tr. 85). Even a casual reading of the report shows that there must have been no more information available at the business address of Walker & Townsend than was reported by Retail Credit. Certainly, Retail Credit did not fail to disclose any information which had turned up there. Conversely, the report fails to disclose anything upon which Ms. Pogue or any other reader of the report, could reasonably rely. Certainly, one may rely on information or representation to one's detriment, but it just as certainly must be a reasonable reliance else one is estopped from claiming any damages resulting therefrom. And as the Court of Appeals stated in its opinion:

> "Despite Ms. Pogue's testimony, an objective evaluation of the reports published by Retail Credit indicate that they obtained no information on which an experienced business woman might *reasonably* rely. Moreover, Retail Credit carefully pointed out that Walker & Townsend assiduously avoided divulging information about itself, even the identity of its principals, a fact that would seem to alert any reasonably experienced person in the business world. Officials of a legitimate business might withhold details of financial information, but hardly their own identity. The report was one of warning, not of assurance." *Pogue* v. *Retail Credit Company*, 453 F.2d 336, 338 (1972).

Plainly, not only was Retail Credit non-negligent in the preparation of its report, but it was not the type of report on which anyone could rely.

III. The Court of Appeals Did Not Err in Holding That There Was No Evidence on Which a Jury Could Find Reliance of Pogue on the Credit Report.

Petitioner's second point complains of the fact that the Court of Appeals observed that "an objective evaluation of

the reports published by Retail Credit indicates that they obtained no information on which an experienced business woman might reasonably rely . . ." She argues that what the Court of Appeals did was say that the Trial Court reached the right result, but gave the wrong reason for doing so, and then went on to give the correct reason. While Respondent does not believe that this is what the Court of Appeals did, had it done so, it would have been correct.

It has long been settled that Appellate Courts may sustain judgments which they think are right for reasons other than those which the Trial Courts gave. *Laughlin* v. *Eicher,* 145 F.2d 700 (D. C. App. 1945); *Commissioner of Internal Revenue* v. *Stimson Mill Company,* 137 F.2d 286 (9th Cir. 1943).

> "In the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason." *Helvering* v. *Gowran,* 302 U.S. 238, 245 (1937).

Thus, if the Fourth Circuit decided to affirm the decision of the District Court for a reason other than that given by the District Court, then it would be perfectly correct in so doing. However, what appears from the opinion rather is that the Court of Appeals did not substitute its opinion for that of the District Court, but rather added an additional reason for the correctness of that decision.

To further assert, as Petitioner does, that this action by the Court of Appeals amounted to a denial of the right for a trial by jury is ridiculous. The point was not an issue in the Trial Court, the Petitioner did not make it an issue in the Court of Appeals, and the Court of Appeals simply added that it was an *additional* reason for the correctness of the decision below. The cases cited by Petitioner are inapposite as they deal with the situation where the Trial Judge substitutes his opinion for that of the jury, when the

jury should have an opportunity to pass on the issues. Thus, in *Baylis* v. *Travelers Insurance Company,* 113 U. S. 320 (1885) the Trial Court directed a verdict for the defendant without giving the jury, which was not waived by the Plaintiff, the opporunity to pass on a critical issue. *Jacob* v. *New York,* 315 U. S. 752 (1943) was a Jones Act case where the question of the simple tool doctrine was presented and whether or not a jury, as provided by the Jones Act, could determine the factual issue under that doctrine. The Supreme Court of the United States held that it could. *Brady* v. *Southern Railway Company,* 320 U.S. 476 (1943) dealt with a situation where the Supreme Court of the United States held that a jury verdict was improper because there was no evidence of negligence presented. In that situation, a trial by jury had been held and the jury had returned a verdict for the Plaintiff which was set aside by the Supreme Court of North Carolina, whose decision was affirmed by the Supreme Court of the United States. That decision—Where the Appellate Court did substitute its judgment for that of a jury— is hardly an authority supportive of the Petitioner's argument.

In any event, the Court of Appeals was not substituting its judgment for that of a jury, but was rather stating that a review of the evidence indicated quite clearly that the decision of the Trial Court was correct. Again, there can be no doubt but that the Appellate Court can review all of the record, and all of the matters presented in evidence, even though not raised on appeal, in affirming the judgment of a Trial Court. *Kithcart* v. *Metropolitan Life Insurance Company,* 150 F.2d 997 (8th Cir. 1945); *Lum Wan* v. *Esperdy,* 321 F.2d 123 (2d Cir. 1963).

The remainder of Petitioner's argument attempts to show that since she allegedly maintained a confidential relationship with Hammerly, the person who obtained the Retail Credit report, she was entitled to rely blindly on the report

of the credit company. Not surprisingly, no authority is cited for this novel proposition.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied. The Court of Appeals for the Fourth Circuit was plainly correct in affirming summarily the decision of the Trial Court.

Respectfully submitted,
ADELARD L. BRAULT

BRAULT, LEWIS, GESCHICKTER & PALMER
Post Office Box 248
Fairfax, Virginia 22030
Counsel for Retail Credit Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief for Respondent in Opposition was mailed, postage prepaid, to Marti Pogue, 1240 Northeast, 117th Terrace, Miami, Florida, 33161, the ..... day of December, 1972.

.....

ADELARD L. BRAULT

ADDENDUM

Section 8-24, Code of Virginia, 1950, as amended.

§ 8-24. Of actions not before specified.—Every action for personal injuries shall be brought within two years next after the right to bring the same shall have accrued. Every personal action, for which no limitation is otherwise prescribed, shall be brought within five years next after the right to bring the same shall have accrued, if it be for a matter of such nature that in case a party die it can be brought by or against his representative; and, if it be for a matter not of such nature, shall be brought within one year next after the right to bring the same shall have accrued. The amendment extending the period within which an action for personal injuries may be brought under this section to two years shall not apply to any cause of action arising prior to July one, nineteen hundred fifty-four. (Code 1919, § 5818; 1954, c. 589.)

1-b

RETAIL CREDIT COMPANY
Atlanta, Georgia

Dear Sirs:

The undersigned desiring to use your reports at the regular prices established by you agrees that all reports will be submitted subject to the following conditions.

All reports will be kept confidential: neither the fact that a report was ordered, nor any information from the report will be revealed to the person reported on or to any other persons except those directly passing on the transaction; no information will be requested for the use of other persons except with your written permission.

We agree to hold Retail Credit Company and all its agents harmless on account of any expense arising from the publishing of information contrary to these conditions.

We agree that the accuracy of any information is not guaranteed by you, and we release Retail Credit Company and its agents from any loss suffered by us from any cause whatever as a result of information reported.

We agree to pay to Retail Credit Company a service charge of $30.00 on this date and on the same date each year thereafter as long as reporting arrangements are in force, provided that the total charges in the preceding twelve-month period do not exceed $200.00. This sum will be considered as a service charge to cover the costs to Retail Credit Company of maintaining service arrangements. It is further agreed, however, that if our total charges in any one year exceed $200.00, this service charge will not be assessed for the following year.

We agree that this letter constitutes all conditions of reporting, present and future, and applies to all reports made by you and by your affiliates. No changes in these conditions may be made except by consent in writing of an officer of your corporation.

Company .....
By GEO. P. HAMMERLY
Title: Owner

Dated 9/27/62 at Leesburg, Va.